

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1084

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 13-4311, Arizona Revised Statutes, is amended to
3 read:

4 13-4311. *Judicial in rem forfeiture proceedings*

5 A. If a forfeiture is authorized by law, it shall be ordered by a
6 court on an action in rem brought by the state pursuant to a notice of
7 pending forfeiture or a verified complaint for forfeiture. The state may
8 serve the complaint in the manner provided by section 13-4307 or by the
9 Arizona rules of civil procedure.

10 B. A civil in rem action may be brought by the state in addition to or
11 in lieu of the civil and criminal in personam forfeiture procedures set forth
12 in sections 13-4312 and 13-4313 or the uncontested civil forfeiture
13 procedures set forth in section 13-4309. Judicial in rem forfeiture
14 proceedings are in the nature of an action in rem and are governed by the
15 Arizona rules of civil procedure unless a different procedure is provided by
16 law.

17 C. On the filing of a civil in rem action by the state in superior
18 court the clerk of the court in which the action is filed shall provide, and
19 the attorney for the state may provide, the notice of pending forfeiture
20 required by section 13-4307 unless the files of the clerk of the court
21 reflect that such notice has previously been made.

22 D. An owner of or interest holder in the property may file a claim
23 against the property, within thirty days after the notice, for a hearing to

1 adjudicate the validity of his claimed interest in the property. The hearing
2 shall be held by the court without a jury.

3 E. The claim shall be signed by the claimant under penalty of perjury
4 and shall set forth all of the following:

5 1. The caption of the proceeding as set forth on the notice of pending
6 forfeiture or complaint and the name of the claimant.

7 2. The address at which the claimant will accept future mailings from
8 the court or attorney for the state.

9 3. The nature and extent of the claimant's interest in the property.

10 4. The date, the identity of the transferor and the circumstances of
11 the claimant's acquisition of the interest in the property.

12 5. The specific provisions of this chapter relied on in asserting
13 that the property is not subject to forfeiture.

14 6. All facts supporting each such assertion.

15 7. Any additional facts supporting the claimant's claim.

16 8. The precise relief sought.

17 F. Copies of the claim shall be mailed to the seizing agency and to
18 the attorney for the state. No extension of time for the filing of a claim
19 may be granted.

20 G. Within twenty days after service of the complaint, the claimant
21 shall file and serve the answer to the complaint and the answers to
22 interrogatories and requests for admission if any were served with the
23 complaint. The answer shall be signed by the owner or interest holder under
24 penalty of perjury, shall comply with the Arizona rules of civil procedure
25 relating to answers and shall comply with all of the requirements for claims.
26 If no proper answer is timely filed, the attorney for the state shall proceed
27 as provided in sections 13-4314 and 13-4315 with ten days' notice to any
28 person who has timely filed a claim that has not been stricken by the court.

29 H. At the time of filing its pleadings or at any other time not less
30 than thirty days before the hearing, the state and any claimant who has
31 timely answered the complaint may serve discovery requests on any other
32 party, the answers or response to which shall be due in twenty days, and may

1 take the deposition of any person at any time after the expiration of fifteen
2 days after the filing and service of the complaint. Any party may move for
3 summary judgment at any time after an answer or responsive pleading is served
4 and not less than thirty days before the hearing. The state, as the party
5 defending against the claim, may make offers of judgment at any time more
6 than ten days before the hearing begins.

7 I. An injured person may submit a request for compensation from
8 forfeited property to the court at any time before the earlier of the entry
9 of a final judgment or an application for an order of the forfeiture of the
10 property, or if a hearing pursuant to subsections K, L and M of this section
11 is held, not less than thirty days before the hearing. The request shall be
12 signed by the requestor under penalty of perjury and shall set forth all of
13 the following:

14 1. The caption of the proceeding as set forth on the notice of pending
15 forfeiture or complaint and the name of the requestor.

16 2. The address at which the requestor will accept future mailings from
17 the court or parties to the action.

18 3. The property subject to forfeiture from which the requestor seeks
19 compensation.

20 4. The nature of the economic loss sustained by the requestor.

21 5. All facts supporting each such assertion.

22 6. Any additional facts supporting the request.

23 7. The amount of economic loss for which the requestor seeks
24 compensation.

25 J. If a proper request for compensation from forfeited property is
26 timely filed, the court shall hold a hearing to establish whether there is a
27 factual basis for the request. The requestor has the burden of establishing
28 by a preponderance of the evidence that the requestor is an injured person
29 who sustained economic loss.

30 K. The hearing on the claim, to the extent practicable and consistent
31 with the interest of justice, shall be held sixty days after all parties have
32 complied with the disclosure required by rule 26.1 of the Arizona rules of

1 civil procedure. The court may consolidate the hearing on the claim with a
2 hearing on any other claim concerning the same property. THE COURT SHALL NOT
3 STRIKE A CLAIM BEFORE A HEARING IS HELD IF THE CLAIM IS IN SUBSTANTIAL
4 COMPLIANCE WITH THE REQUIREMENTS OF SUBSECTION E OF THIS SECTION. FOR THE
5 PURPOSES OF THIS SUBSECTION, "SUBSTANTIAL COMPLIANCE" MEANS SUFFICIENT
6 INFORMATION TO ESTABLISH A RIGHT OR INTEREST IN THE PROPERTY AND THE IDENTITY
7 OF THE OWNER OR INTEREST HOLDER.

8 L. At the hearing, the claimant may testify, present evidence and
9 witnesses on the claimant's own behalf and cross-examine witnesses who appear
10 at the hearing. The state may present evidence and witnesses and
11 cross-examine witnesses who appear at the hearing.

12 M. At the hearing, the state has the burden of establishing by a
13 preponderance of the evidence that the property is subject to forfeiture
14 under section 13-4304. Any claimant who has previously established by a
15 preponderance of the evidence that the claimant is an owner of or interest
16 holder in the property has the burden of establishing by a preponderance of
17 the evidence that the claimant's interest in the property is exempt from
18 forfeiture under section 13-4304.

19 N. In accordance with its findings at the hearing:

20 1. The court shall order an interest in property returned or conveyed
21 to a claimant, if any, who has established by a preponderance of the evidence
22 that the claimant is an owner of or interest holder in the property if either
23 of the following applies:

24 (a) The state has failed to establish by a preponderance of the
25 evidence that the interest is subject to forfeiture under section 13-4304.

26 (b) The claimant has established by a preponderance of the evidence
27 that the interest is exempt from forfeiture under section 13-4304.

28 2. The court shall order all other property, including all interests
29 in the property, forfeited to this state and proceed pursuant to sections
30 13-4314 and 13-4315.

31 3. If the court finds that a requestor is an injured person the court
32 shall determine the amount of the injured person's economic loss caused by

1 the conduct giving rise to the forfeiture of the designated property and
2 shall require the following:

3 (a) If the designated property is not contraband and is not altered or
4 designed for use in conduct giving rise to forfeiture, the attorney for the
5 state shall sell the property as provided in section 13-4315, subsection A,
6 paragraph 2, and shall apply the resulting balance to compensate the injured
7 person's economic loss in the amount found by the court.

8 (b) If the balance is insufficient to compensate the economic loss of
9 all injured persons the attorney for the state shall distribute the balance
10 among the injured persons according to a method determined by the court.

11 (c) After compensation of all injured persons, the attorney for the
12 state shall transmit ten per cent of the remaining balance, if any, to the
13 Arizona criminal justice commission for deposit in the victim compensation
14 and assistance fund established by section 41-2407.

15 (d) The attorney for the state shall deposit the remainder of the
16 balance, if any, in an appropriate anti-racketeering revolving fund
17 established by section 13-2314.01 or 13-2314.03.

18 Sec. 2. Section 13-4314, Arizona Revised Statutes, is amended to read:

19 13-4314. Disposition by court

20 A. If no petitions for remission or mitigation or claims are timely
21 filed or if no petitioner files a claim in the court **THAT IS IN SUBSTANTIAL**
22 **COMPLIANCE WITH THE LAW** within thirty days after the mailing of a declaration
23 of forfeiture, the attorney for the state shall apply to the court for an
24 order of forfeiture and allocation of forfeited property pursuant to section
25 13-4315. On the state's written application showing jurisdiction, notice and
26 facts sufficient to demonstrate **probable cause CLEAR AND CONVINCING EVIDENCE**
27 **OF THE GROUNDS** for forfeiture, and in cases brought pursuant to section
28 13-3413, subsection A, paragraph 1 or 3, **probable cause CLEAR AND CONVINCING**
29 **EVIDENCE** to believe that the conduct giving rise to forfeiture involved an
30 amount of unlawful substance greater than the statutory threshold amount as
31 defined in section 13-3401 or was committed for financial gain, the court
32 shall order the property forfeited to the state. **FOR THE PURPOSES OF THIS**

1 SUBSECTION, "SUBSTANTIAL COMPLIANCE" MEANS SUFFICIENT INFORMATION TO
2 ESTABLISH A RIGHT OR INTEREST IN THE PROPERTY AND THE IDENTITY OF THE OWNER
3 OR INTEREST HOLDER.

4 B. After the court's disposition of all claims timely filed under this
5 chapter, the state has clear title to the forfeited property and the court
6 shall so order. Title to the forfeited property and its proceeds is deemed
7 to have vested in the state on the commission of the act or omission giving
8 rise to the forfeiture under this title.

9 C. If, in his discretion, the attorney for the state has entered into
10 a stipulation with an interest holder that the interest holder has an
11 interest that is exempted from forfeiture, the court, on application of the
12 attorney for the state, may release or convey forfeited personal property to
13 the interest holder if all of the following are true:

14 1. The interest holder has an interest which was acquired in the
15 regular course of business as a financial institution within section 13-2301,
16 subsection D, paragraph 3.

17 2. The amount of the interest holder's encumbrance is readily
18 determinable and it has been reasonably established by proof made available
19 by the attorney for the state to the court.

20 3. The encumbrance held by the interest holder seeking possession is
21 the only interest exempted from forfeiture and the order forfeiting the
22 property to the state transferred all of the rights of the owner prior to
23 forfeiture, including rights to redemption, to the state.

24 4. After the court's release or conveyance, the interest holder shall
25 dispose of the property by a commercially reasonable public sale, and within
26 ten days of disposition shall tender to the state the amount received at
27 disposition less the amount of the interest holder's encumbrance and
28 reasonable expense incurred by the interest holder in connection with the
29 sale or disposal.

30 D. On order of the court forfeiting the subject property, the attorney
31 for the state may transfer good and sufficient title to any subsequent
32 purchaser or transferee, and the title shall be recognized by all courts, by

1 this state and by all departments and agencies of this state and any
2 political subdivision.

3 E. On entry of judgment for a claimant or claimants in any proceeding
4 to forfeit property under this chapter such property or interest in property
5 shall be returned or conveyed immediately to the claimant or claimants
6 designated by the court. If it appears that there was reasonable cause for
7 the seizure for forfeiture or for the filing of the notice of pending
8 forfeiture, complaint, information or indictment, the court shall cause a
9 finding to be entered, and the claimant is not, in such case, entitled to
10 costs or damages, nor is the person or seizing agency that made the seizure,
11 nor is the attorney for the state liable to suit or judgment on account of
12 such seizure, suit or prosecution.

13 F. The court shall order any claimant who fails to establish that his
14 entire interest is exempt from forfeiture under section 13-4304 to pay the
15 costs of any claimant who establishes that his entire interest is exempt from
16 forfeiture under section 13-4304 and the state's costs and expenses of the
17 investigation and prosecution of the matter, including reasonable attorney
18 fees.

19 Sec. 3. Retroactivity

20 This act is effective retroactively to from and after July 1, 2004."

21 Amend title to conform

KIRK ADAMS

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